IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

W.P.(C).No. 26827 of 2007(R)

PETITIONER:

K.RAJESH,S/O.P.RAJASEKHARAN,AGED 34, 29/2051,"ACHUTHAM",KOTTOLI,KOZHIKODE,REP.BY P/A HOLDER MRS.RAJASREE UNNIKRISHNAN, W/O.V.M.UNNIKRISHNAN,AGED 39 YEARS,"ACHYUTHAM", NO.16,ULHAS NAGAR COLONY,P.O.KUTHIRAVATTOM, KOZHIKODE.

BY ADV. SRI.C.P.MOHAMMED NIA
SRI.SRINATH GIRISH
SRI.E. NARAYANAN

RESPONDENTS:

1. **THE CATHOLIC SYRIAN BANK LIMITED, ZONAL OFFICE, P.B.NO.209, THARAMARASSERY DIOCESE SHOPPING COMPLEX, INDIRA GANDHI ROAD, KOZHIKODE. REPRESENTED BY ITS AUTHORIZED OFFICER AND DEPUTY ZONAL MANAGER.**

2. **LIC HOUSING FINANCE LTD., AREA OFFICE, RAILWAY STATION LINK ROAD, KOZHIKODE, REPRESENTED BY ITS DEPUTY GENERAL MANAGER.**

3. **E.ABDU, PROPRIETOR, M/S GRAND HOME, BRIGHT HOUSE, KOMMERI P.O., VALAYANAD AMSOM KOMMERI DESOM, KOZHIKODE.**

4. **KAMARUNNISA, W/O ABDU, M/S GRAND HOME, BRIGHT HOUSE, KOMMERI P.O., VALAYANAD AMSOM KOMMERI DESOM, KOZHIKODE.**

BY ADV. SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN
SRI.NIRMAL. S
SRI.K.BIJESH
SRI.B.S. KRISHNAN, SC FOR BANK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) NO.26827 OF 2007 R

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Dated this the 27th day of November, 2007

J U D G M E N T

Proceedings initiated against the mortgaged property under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 at the instance of the 1st respondent Bank is under challenge. Petitioner submits that the property originally belonged to respondents 3 and 4 and it is on the basis of a partition deed executed on 27/3/81 that they got title over the property. It is stated that subsequently, respondents 3 and 4 mortgaged the said property with the 1st respondent Bank using a copy of their title deed and it was thereafter that the petitioner had purchased the said property on 29/12/04. Later on two suits were filed by the Bank as OS 115 and 126/06 before the Sub Court, Calicut and the plaint in these suits are Exts. P5 and P6. In these suits, the petitioner is also a party and Exts.P7 and P8 are the written statements. After settlement of the issues, in the suit, the 1st respondent Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Ext.P11 is the notice issued

under Section 13(2) of the said Act. To this, petitioner has given Ext.P12 reply and thereafter this writ petition has been filed challenging the proceedings. Petitioner submits that on the strength of his valid title, he too has availed of a loan by depositing his title deeds with the 2nd respondent. According to the petitioner, the 1st respondent acted illegally in accepting copy of the title deeds from respondents 3 and 4 and creating mortgage in respect of his property. It is also argued that when he raised these valid contentions, the bank adopted a short cut by resorting to the impugned proceedings.

2. The fact that during the pendency of the suit the Bank is competent to initiate proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 cannot be challenged. The only question is whether, in the peculiar facts of this case, whether Bank had committed any irregularity in creating mortgage and extending financial assistance to respondents 3 and 4. In this case, irrespective of the factual details, it is certain that it is long after the mortgage was created, the petitioner purchased the property

in 2004. Therefore, at the time when the mortgage was created, respondents 3 and 4 had valid title over the property and were fully competent to create mortgage. If that be so, the petitioner at best can proceed against respondents 3 and 4 and not challenge the charge created in favour of the Bank or the proceedings initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. Irrespective of this, second prayer of the petitioner is to direct the Bank to consider the objection raised by the petitioner on receipt of Section 13(2) notice. It is admitted that in response to Ext.P11 notice under Section 13(2), petitioner has given Ext.P12 reply. This the Bank needs to deal with and a reply has to be given, and the Bank shall do, as expeditiously as possible.

Subject to the above writ petition is dismissed. Needless to say that the observations made herein are only prima facie findings and will not cause any prejudice to the petitioner in the suit.

ANTONY DOMINIC, JUDGE

Rp